



MINUTES

LAFCO REGULAR MEETING

Wednesday, March 10, 2004, 9:00 a.m.

Planning Commission Hearing Room, Hall of Administration

10 Civic Center Plaza, Santa Ana

(Any member of the public may request to speak on any agenda item at the time that item is being considered by the Commission.)

1. CALL TO ORDER

Chair Charles Smith called the regular meeting of the Local Agency Formation Commission (LAFCO) to order at 9:03 a.m.

2. PLEDGE OF ALLEGIANCE

Chair Charles Smith led the pledge of allegiance.

3. ROLL CALL

The following commissioners and alternates were present:

- **Commissioner Randal J. Bressette**
- **Commissioner Peter Herzog**
- **Commissioner Arlene Schafer**
- **Commissioner Charles Smith**
- **Commissioner Susan Wilson**
- **Commissioner John Withers**
- **Alternate Commissioner Robert Bouer**
- **Alternate Commissioner Rhonda McCune**
- **Alternate Commissioner Charley Wilson**

The following LAFCO staff members were present:

- General Counsel Clark Alsop
- Acting Executive Officer Bob Aldrich
- Senior Project Manager Ken Lee
- Policy Analyst Kim Koeppen
- Policy Analyst Carolyn Thomas
- Communications Analyst Danielle Ball
- Administrative Assistant Daphne Charles

4. APPROVAL OF MINUTES

a.) February 11, 2004 – Regular Commission Meeting

MOTION: Approve minutes from February 11, 2004 without revision
(Randal Bressette)
SECOND: Arlene Schafer
FOR: Randal Bressette, Peter Herzog, Arlene Schafer, Charles
Smith, Susan Wilson, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

5. PUBLIC COMMENT

Chair Smith requested public comments on any non-agenda item.

John Herbert, a resident from the City of Yorba Linda, presented before the Commission to discuss the Center City Annexation to the City of Yorba Linda, which voters rejected during the March 5 election. He reminded the Commission that the annexation application was tied to two separate and distinct island areas in the City of Yorba Linda, commonly referred to the Country Club island and the Fairlynn island. He informed the Commission that residents of both islands received two mailers from the Orange County Deputy Sheriff Department's political action committee (PAC) urging that residents vote against the annexation. He said that the Fairlynn island is not adequately served in terms of police protection or traffic control and added that he considered the actions of the PAC unconscionable when many island residents crusaded long and hard to have the island areas annexed to the city.

Commissioner Herzog requested that Mr. Herbert leave copies of the mailers for the Commission's review.

Commissioner McCune verified that the mailers clearly indicate who paid for them.

Chair Smith requested additional public comments on any non-agenda item. Receiving no response, he closed the public comment agenda item without any additional statements from the public.

6. CONSENT CALENDAR

a.) Bedford Annexation to the Orange County Sanitation District (DA 03-21)

MOTION: Approve the consent calendar (Randal Bressette)
SECOND: Susan Wilson

FOR: Randal Bressette, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

7. PUBLIC HEARING

a.) Avery/Del Obispo Reorganization (RO 01-11)

Senior Project Manager Ken Lee reported that the reorganization proposal was a product of the 1998 merger of the Capistrano Valley Water District, a subsidiary district, and the City of San Juan Capistrano. He said that the merger necessitated the detachment of territories from the Capistrano Valley Water District that lie outside of the city's boundaries and the designation of successor agencies to pick up the responsibility of providing water services to those areas. He displayed a map of the area and pointed out the parcels affected by the proposed reorganization, which would be detached from the Capistrano Valley Water District and concurrently annexed to the Moulton Niguel Water District.

Chair Smith opened the public hearing for the Avery/Del Obispo reorganization and requested comments from the public. Receiving no response, he closed the public hearing.

MOTION: Approve the Avery/Del Obispo Reorganization subject to the terms and conditions outlined in the staff report and authorize staff to conduct protest proceedings (Randal Bressette)
SECOND: John Withers
FOR: Randal Bressette, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers
AGAINST: None
ABSTAIN: None
MOTION PASSED

8. COMMISSION DISCUSSION

- a.) CBIZ ATA of Orange County Contract
- b.) Legislative Report
- c.) Update on the Costa Mesa and Newport Beach Islands Annexations

- 8a.** Assistant Executive Officer Aldrich said that staff recommended approval of a one-year contract with CBIZ ATA of Orange County, formerly known as Conrad Business Services, Inc., for the provision of general accounting services. He said that LAFCO has contracted with CBIZ ATA for the past two years and stated that, among

other things, the firm has been instrumental in helping staff develop the Commission's annual budgets. He indicated that Jennifer Christian from CBIZ was available to answer any questions that the Commission might have about the contract.

MOTION: **Approve contract with CBIZ ATA of Orange County (Arlene Schafer)**

SECOND: **Randal Bressette**

FOR: **Randal Bressette, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers**

AGAINST: **None**

ABSTAIN: **None**

MOTION PASSED

- 8b.** Senior Project Manager Lee said that the staff report outlines recommended positions on 2004 legislation of interest to LAFCO. He highlighted AB 2067, a CALAFCO-sponsored measure authored by Assemblyman Tom Harman. He said the bill addresses agency reorganizations and will seek to employ language that provides maximum flexibility to LAFCO, special districts, and other agencies to look at alternative ways to reorganize agencies in the best interest of the rate-paying public. He stated that current law stipulates that consolidations can only occur between special districts formed under the same principal act and said that AB 2067 would enable the consolidation of "dissimilar" agencies, or those formed under different principle acts. He said that CALAFCO will continue working with the Association of California Water Agencies ("ACWA") to ensure that ACWA is comfortable with the language incorporated into the bill.

Chair Smith verified the recommended position on AB 192. Mr. Lee specified that the report recommends positions on two different Assembly bills written by Assemblyman Harman, a "support" position on AB 2067 and a "watch" position on AB 192.

Commissioner Herzog asked Mr. Lee to double-check the status of AB 838, as he heard that AB 838 died in committee and is no longer a two-year bill. He further asked Mr. Lee for clarification on AB 2779.

Mr. Lee stated that Assembly Member Maze's staff indicated that Assembly Member Maze would likely offer his support and resources to promote Senator Torlakson's bill, SB 1266, rather than pursue AB 2779. He added that the Torlakson bill addresses somewhat different "island" provisions in the Cortese-Knox-Hertzberg Act than the Maze bill.

Commissioner Herzog suggested that the Commission could adopt a support position for AB 2779 and simply hold the letter until such time as Assembly Member Maze decides to pursue the bill. The Commission concurred.

Commissioner Herzog commented that the CALAFCO Legislative Committee met yesterday and decided to oppose the Torlakson bill, SB 1266. He said that the bill originated from a conflict in Contra Costa County but has a much broader scope. He explained that CALAFCO decided to oppose the bill, because supporting statewide legislation to address a specialized issue in a single county contradicts CALAFCO's mandate to support the local LAFCOs by promoting legislative flexibility.

Mr. Lee commented that SB 1266 encompasses some potentially beneficial provisions aside from defining "substantially surrounded," which is the reason staff recommended that the Commission take a "watch" position. He said that the bill is not in conflict with the Commission's local policy regarding islands in Orange County and that it might clarify other ambiguities within the code.

Commissioner McCune asked if AB 838 died in committee because it is too specific to the community of Rancho Santa Margarita.

Mr. Lee explained that, when originally introduced, AB 838 wasn't specific to Rancho Santa Margarita but rather general legislation that would apply to any new city. He added that the proposed bill was sparked by concern in the business community about conflicts between local zoning procedures and CC&Rs. He said the bill could potentially resurface in coming years as more new cities become incorporated.

Mr. Lee further highlighted SB 1414, which states the legislature's intent to enact legislation to consolidate local water agencies in Southern California. He said that the bill is reminiscent of the 1997 "Pringle Bill" (AB 556), which would have statutorily consolidated various special districts in Orange County. He indicated that staff recommends opposition, as the bill largely undermines LAFCO's authority to work with special districts at the local level and diminishes the control that LAFCOs have over local agencies' boundaries and service delivery issues.

Commissioner Withers added some informational comments about the local water issues in the Lake Arrowhead area that spurred the development of SB 1414.

Mr. Lee commented that SB 1414 may in fact change in form and become special legislation affecting only San Bernardino County.

MOTION: **Receive and file legislative report; adopt positions on 2004 legislation as outlined but hold support letter for AB 2779 as discussed (Susan Wilson)**

SECOND: **Randal Bressette**

FOR: **Randal Bressette, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers**

AGAINST: None

ABSTAIN: None

MOTION PASSED

- 8c.** Policy Analyst Carolyn Thomas recapped the annexation applications approved by the Commission at the September 2002 meeting related to the unincorporated islands near the Cities of Costa Mesa and Newport Beach, including: 1) the five small island annexations to Costa Mesa; 2) the annexation of East Santa Ana Heights to Newport Beach; and 3) the annexation of Bay Knolls to Newport Beach. She reminded the Commission that, while the Commission approved the annexation of Area 7 (excluding West Santa Heights) to Costa Mesa, more than fifty percent of the registered voters living in the island submitted valid protests, thereby terminating the annexation. She highlighted on a map the island areas that remain unincorporated in the vicinity of Costa Mesa and Newport Beach.

Ms. Thomas explained that the Commission has two pending applications for the West Santa Ana Heights (WSAH) area, one requesting a change in sphere of influence (SOI) initiated by the residents of WSAH and the other from the City of Costa Mesa requesting to annex WSAH. She reminded the Commission that both of these applications were continued in September 2002 to allow the City of Newport Beach the opportunity to pre-zone WSAH and file an annexation application. She stated that the Costa Mesa city council adopted a resolution in February 2003 reaffirming the city's intent to annex all county islands within its SOI and opposing any efforts by the City of Newport Beach to annex the Santa Ana Country Club or the area south of Mesa Drive. She said that, while WSAH lies within Costa Mesa's SOI, both cities are engaged in an active dialogue to determine which city would best serve the area. She added that the City of Newport Beach will consider pre-zoning WSAH in March and will likely submit an annexation application to LAFCO in the near future.

Ms. Thomas said that, upon receiving Newport Beach's annexation application for WSAH, staff will bring all three applications related to WSAH before the Commission for consideration simultaneously.

Commissioner Withers asked if the City of Costa Mesa has any legal means to subvert the action of the City of Newport Beach if Newport Beach attempts to annex territory within Costa Mesa's SOI.

Legal Counsel Alsop explained that cities were not prohibited from annexing territory outside of their SOI until a few years ago. He said that if the City of Newport Beach is interested in annexing territory within the City of Costa Mesa's SOI, Newport Beach must first petition LAFCO to change the Newport Beach SOI to include the territory to be annexed. He clarified that any public agency can initiate an application,

meaning that the City of Newport Beach can initiate such an application, even if the City of Costa Mesa is opposed to such action.

Commissioner Schafer asked if the City of Newport Beach intends to pre-zone all of Area 7 or just specific portions of it. Ms. Thomas responded that the Newport Beach planning commission considered the entire area, including the Santa Ana Country Club, WSAH, and the residential and commercial area south of Mesa Drive and recommended that the Newport Beach city council pre-zone the entire area. She added that the Newport Beach city council will consider the planning commission's recommendation to pre-zone all of Area 7 later in the month. She said that staff's communications with the Cities of Costa Mesa and Newport Beach to date indicate that both cities will likely concur on the applications that are brought before the Commission rather than initiate a conflict that the Commission will have to resolve.

Commissioner Withers suggested that the \$30M in redevelopment funds attached to WSAH is likely a complicating factor. Ms. Thomas stated that the City of Newport Beach remains engaged in discussions with the County regarding the redevelopment area.

Commissioner Bouer commented about the extended effort that staff expended trying to devise a logical boundary between the two cities. He congratulated staff for its continued diligence in working with the cities and the island residents.

Commissioner Withers requested the general criteria for considering an SOI amendment. Mr. Lee said that the Commission must make four determinations when amending a city's SOI: 1) present and planned land uses; 2) the existence of extendable public services; 3) public facilities to coordinate the extension of services; and 4) social and economic communities of interest. He stated that the fourth criterion is the one that poses the most difficulty for LAFCOs to determine.

Per **Commissioner Bressette's** request, Ms. Thomas clarified the territory included in Area 7.

Commissioner McCune asked what city is reflected in the Area 7 residents' mailing addresses. Ms. Thomas responded that the Santa Ana Country Club and the area south of Mesa Drive reflect a Costa Mesa mailing address, while WSAH reflects a mailing address of "West Santa Ana Heights, CA."

9. COMMISSIONER COMMENTS

Chair Smith invited his fellow commissioners to comment on issues not listed on the agenda.

Vice Chair S. Wilson requested an update on the Municipal Service Review (MSR) Program. Acting Executive Officer Aldrich reminded the Commission that there are two prototype areas engaged in the MSR process, Los Alamitos/Seal Beach/Rossmoor/Sunset Beach and Orange/Villa Park/Orange SOI. Speaking of the Los Alamitos/Seal Beach/Rossmoor/Sunset MSR prototype, he stated that the stakeholder working group had met twice and would meet again in late March. He added that the group had made significant progress to date, commenting that the entities represented on the stakeholder working group were working cooperatively and that the data collection efforts were well underway. He opined that the working group members remained protective of their jurisdictions but were now beginning to see opportunities for greater collaboration as they build trust throughout the MSR process. He commended Sharon Browning for her contributions as facilitator for both prototype areas.

Policy Analyst Koeppen provided an update re the Orange/Villa Park/Orange SOI prototype, stating that the stakeholder working group had two very productive meetings to date and would have a third at the end of the week. She noted the prevalence of water district representation on the stakeholder working group and said that most of the discussions had been skewed toward water issues, but she added that she was hopeful that the working group would broaden their discussions to other key issues at the next meeting. She commented on the level of cooperation between the members of the stakeholder working group, including County representative Rob Richardson, who has been instrumental in handling the working group's data requests.

Referring to the testimony provided under public comment, **Commissioner McCune** commented that the average citizen could easily mistake the flyers distributed by the Orange County Deputy Sheriff Department's political action committee (PAC) for an official campaign spearheaded by the County against the annexation. She asked if staff had encountered similar opposition campaigns in past island annexations.

Acting Executive Officer Aldrich responded that, in the 22 island annexations completed to date, staff had never encountered such organized opposition on behalf of an entity that might be mistaken for a government agency.

Ms. Koeppen added that, prior to receiving a flyer, staff from the City of Yorba Linda had contacted LAFCO after hearing from private citizens that the Sheriff's department was campaigning against the annexation. She said that the city later confirmed that the association organized the opposition effort, not the Sheriff's department itself, but she stated that some of the residents found the flyers confusing.

Commissioner Bressette asked the funding status for the Unincorporated Islands Program. Acting Executive Officer Aldrich stated that the Islands Program is in its third year. He said that the County fully funded the first two years of the program and

that LAFCO funded the third. He indicated that funding for the program will run out at the end of this fiscal year, June 30, 2004.

Commissioner Bressette asked if the County would be amicable to prolonging the program with additional funding. He said that he hoped that the Board of Supervisors would see the value in getting the remainder of the unincorporated small islands annexed to cities.

Chair Smith responded that the Board of Supervisors is currently engaged in the budgeting process but has not yet been asked to consider additional funding for the Islands Program. He suggested that it would be timely for staff to submit the request to the County now if the Commission is in fact interested in extending the program. He added that the composition of the Board has changed significantly since the program's inception three years ago and said that he wasn't sure if the Board would agree to the funding request.

Mr. Aldrich agreed to follow-up with a request to the County.

Commissioner Herzog reminded his fellow commissioners that the 2004 annual CALAFCO conference is scheduled September 8 through September 10 in Anaheim at the Disney Grand Californian Hotel. He provided a short update on the conference planning committee's actions to date in preparing for the event. He said that committee intends to distribute a preliminary program well in advance in the conference. He asked the commissioners to submit their ideas for topics and speakers to Communications Analyst Danielle Ball.

Commissioner Withers suggested that securing a representative from Governor Schwarzenegger's office as a speaker would be a big draw.

Chair Smith requested additional comments from the Commission. Receiving no response, he closed the commissioner comments agenda item without any additional discussion by the Commission.

10. INFORMATIONAL ITEMS

None

11. CLOSED SESSION

PUBLIC EMPLOYEE APPOINTMENT

(Section 54957)

Title: Executive Officer

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Subdivision (a) of Section 65965.9)

Name of case: Airport Working Group of Orange County and Orange County Regional Airport Authority v. Local Agency Formation Commission of Orange County; City of Irvine, et al.

Chair Smith adjourned the Commission meeting for closed session at 9:59 a.m.

Legal Counsel Alsop indicated that he didn't anticipate that there would be any reportable action to come out of closed session.

12. ADJOURNMENT

Chair Smith adjourned the meeting at 10:45 a.m.

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BOB ALDRICH
Acting Executive Officer
Orange County Local Agency Formation Commission

By: _____
Danielle M. Ball
Commission Clerk